



**[4310-T2]**

**DEPARTMENT OF THE INTERIOR**

**Office of Natural Resources Revenue**

**30 CFR Parts 1203, 1210, and 1218**

**[Docket No. ONRR-2012-0001; DS63610300 DR2PS0000.CH7000 134D0102R2]**

**RIN 1012-AA04**

**Valuation of Federal Coal for Advance Royalty Purposes and Information Collection**

**Applicable to All Solid Minerals Leases**

**AGENCY:** Office of Natural Resources Revenue (ONRR), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** ONRR proposes new regulations to implement the provisions of the Energy Policy Act of 2005 (EPAcT) governing the payment of advance royalty on coal resources produced from Federal leases. The EPAcT provisions amend the Mineral Leasing Act of 1920 (MLA). ONRR also proposes to add information collection requirements that are applicable to all solid minerals leases and also are necessary to implement the EPAcT Federal coal advance royalty provisions.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS**

**AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments to ONRR by one of the following methods (Please use "ICR 1012-0010" as an identifier in your comment):

- Electronically go to <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter "ONRR-2012-0001," then click "Search." Follow the instructions to submit

public comments. ONRR will post all comments. You also can review the ICR at <http://www.reginfo.gov>.

- Mail comments to Armand Southall, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61030A, Denver, Colorado 80225-0165.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A-614, MS 61030A, Denver Federal Center, West 6<sup>th</sup> Ave. and Kipling St., Denver, Colorado 80225.
- *Information Collection Request (ICR) Comments:* Submit written comments by either fax (202) 395–5806 or email ([OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov)) directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for the Department of the Interior. Include the title of the information collection, “30 CFR Parts 1202, 1206, 1210, 1212, 1217, and 1218, Solid Minerals and Geothermal Collections,” and OMB Control Number, “1012-0010.” Please also submit your comments to ONRR at [mailto:http://www.regulations.gov](mailto:mailto:http://www.regulations.gov). Include your name and address. You may also mail a copy of your comments to Armand Southall, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61030A, Denver, Colorado 80225-0165. If you use an overnight courier service or wish to hand-deliver your comments, our courier address is Building 85, Room A-614, MS 61030A, Denver Federal Center, West 6<sup>th</sup> Ave. and Kipling St., Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues, contact Sarah T. Holladay, ONRR, at (303) 231-3775. The principal authors of this rule are Sarah L. Inderbitzin, Karen Garza, and Sarah T. Holladay, ONRR. For comments or

questions on procedural issues, contact Armand Southall, Regulatory Specialist, ONRR, at (303) 231-3221, or by email at [armand.southall@onrr.gov](mailto:armand.southall@onrr.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *A. Pre-EPA Act Statutory Provisions and Current Regulations*

Under the MLA at 30 U.S.C. 207(b), Federal coal leases are subject to conditions of diligent development and continued operation of the mine(s). Section 207(b) provides that when a lessee pays coal advance royalties, the Secretary of the Department of the Interior (Secretary) may suspend the condition of continued operation if the Secretary determines that such action will serve the public interest. Section 207(b) also prescribes a methodology to compute coal advance royalties based upon a fixed reserve-to-production ratio that the Secretary determines, which shall be no less than the production royalty that lessees would otherwise pay. The value for coal advance royalty purposes is currently under existing Bureau of Land Management (BLM) regulations at 43 CFR 3483.4(c). and is either based on the

(1) the unit value for coal sold from the Federal coal lease or logical mining unit (LMU) during the immediately preceding production royalty payment period (2) the average unit price coal was sold for from other Federal leases in the same region during the same period if no coal was produced and sold from the Federal coal lease or LMU during that period or BLM determines there is an insufficient number of sales to determine value; or (3) if there was no Federal coal sold from the region during the period or if BLM determines there are not enough sales to determine value, then BLM may determine value. Under each computation, coal advance royalties are based on

commercial quantities of coal, and the advance royalties can be credited against future production royalties from the same lease or LMU.

Prior to the passage of the EPO Act, BLM was responsible for administering the advance royalty requirements for Federal coal leases and LMUs under its regulations at 43 CFR part 3480. On August 11, 1997, ONRR [the former Minerals Management Service (MMS)] issued a memorandum (ONRR Memorandum) clarifying that, under a June 1997 Tripartite Memorandum of Understanding (Tripartite MOU), BLM and ONRR shared responsibilities concerning coal advance royalties. This MOU also included the Bureau of Indian Affairs. The ONRR Memorandum standardized procedures and responsibilities for BLM and ONRR in determining coal advance royalties. Under the Tripartite MOU and the ONRR Memorandum, BLM continued to determine the volume of coal under 43 CFR 3483.4(c), but ONRR determined the value for the coal advance royalty due under that same section. Upon determining the coal advance royalty due, ONRR issued an Order to Pay Advance Royalty to the applicant.

ONRR has been issuing Orders to Pay Advance Royalty since the Tripartite MOU went into effect. However, coal lessees have challenged ONRR's authority to determine coal advance royalty due through appeals of Orders to Pay Advance Royalty. Indeed, in *BTU Empire Corp.*, 172 IBLA 206, 221 (2007), the Interior Board of Land Appeals set aside an ONRR Director's Decision and remanded the decision to ONRR and BLM to "...clarify in a subsequent decision...the issue of the governing authority that establishes who is the final decisionmaker on the topic of advance royalty calculations."

To resolve the issue of authority and responsibility, and because ONRR and BLM agree that the authority and responsibility should reside in ONRR's regulations, this

proposed rule would move the portion of the BLM regulations regarding valuation of Federal coal reserves for coal advance royalty purposes from its present location at 43 CFR 3483.4(c) to ONRR regulations in a new 30 CFR part 1218, subpart I, titled “Federal Coal Advance Royalty.”

### *B. The EAct*

On August 8, 2005, the President signed into law the EAct, Pub. L. 109-58, 119 Stat. 594. Section 434 of the EAct, entitled the "Payment Of Advance Royalties Under Coal Leases," amended the MLA, 30 U.S.C. 207(b). Section 434 of the EAct amends the process for payment of advance royalties under Federal coal leases.

The portion of this proposed rulemaking pertaining to payment of advance royalties would implement the EAct section 434 provisions and would apply only to Federal coal leases. This proposed rulemaking also would further Congress’s purpose of regulatory streamlining by:

- Implementing the revised Federal coal unit value methodology and payment provisions for coal advance royalty under proposed subpart I of 30 CFR part 1218; and
- Amending 30 CFR parts 1203, 1210, and 1218 to propose changes necessary to implement the Federal coal advance royalty provisions of the EAct.

### *C. The Information Collection*

As further discussed below, ONRR is also proposing to add new information collection requirements applicable to all Federal and Indian solid minerals leases. However, as we also discuss below, this proposed information collection would not substantively impact Indian mineral owners.

## **II. Explanation of Proposed Amendments**

Before reading the explanatory information below, please turn to the proposed rule language, which immediately follows the List of Subjects in 30 CFR parts 1203, 1210, and 1218 and the signature page in this proposed rule. ONRR would codify this language in 30 CFR, chapter XII, when we finalize this rule.

When you have read the rule thoroughly, please return to the preamble discussion below. The preamble contains additional information about the proposed rule, such as why we defined a term in a certain manner, why we chose a certain procedure, and how we interpret the law this rule implements.

*A. Section-By-Section Analysis of 30 CFR Part 1203—Relief or Reduction in Royalty Rates*

ONRR proposes to remove §1203.250 and renumber §1203.251 as §1203.250. Part 1218, subpart I, would address the provisions for payment of advance royalty in lieu of continued operation.

*B. Section-by-Section Analysis of 30 CFR Part 1210—Forms and Reports, Subpart A—General Provisions*

*§1210.10 What are the OMB-approved information collections?*

In the table under the column "Form or information collected", ONRR proposes to delete the title "Sales summaries—solid minerals," and replace it with a new "Form ONRR-4440—Solid Minerals Sales Summary." We would place this form number and name after the title "Form ONRR-4430, Solid Minerals Production and Royalty Report" and before the title "Form ONRR-4292, Coal Washing Allowance Report." Currently, ONRR is updating all form numbers from MMS to ONRR in a separate rulemaking, RIN 1012-AA09. We would design Form ONRR-4440, Solid Minerals Sales Summary, to

replace the current Sales Summaries, which require companies to submit their own internally generated documents to ONRR. We would use the proposed Form ONRR-4440 to collect information from operators in order to determine a company's compliance with applicable laws, rules, and regulations. In addition, ONRR would use this proposed form to identify spot market sales of comparable coal from the same region and to determine an average price for Federal coal advance royalty purposes. This proposed form should reduce industry's burden of responding to ONRR site visits, e-mails, and telephone contacts. ONRR believes the data would be valuable in (1) making valuation determinations, (2) trending coal prices, (3) comparing purchaser sources, and (4) ensuring that the Federal Government and Indian lessors receive fair market value for coal. In addition, ONRR's automated systems can use the standardized, formatted data more easily.

ONRR is developing an automated system that would receive and store the sales summary data that lessees would submit on the proposed Form ONRR-4440. Industry would submit and ONRR would utilize the submitted data in two phases. Phase 1 is a modified version of the system currently used to submit and handle unformatted sales summary data. Phase 2 would require lessees to submit proposed Form ONRR-4440 electronically. This submittal process would be similar to the current process ONRR requires lessees to follow to submit Form ONRR-4430, Solid Minerals Production and Royalty Report (Form ONRR-4430, P&R Report). Each phase would have the benefits and costs discussed below.

In the Phase 1, ONRR would modify its current procedures and systems to incorporate critical additional data fields this proposed rulemaking would require. Under

this proposed rule, lessees would submit Form ONRR-4440 in a standardized format. Under Phase 1, we would receive the new Form ONRR-4440 by email attachment that lessees would submit to a secure email address. We would then move the attachments into an electronic Room (eRoom) using a process similar to what ONRR currently uses to handle non-standardized sales summaries. Because the lessee would submit the data in a standardized format, ONRR would design a program under this phase that would automatically load the sales summaries into our databases.

Phase 2 would require lessees to submit proposed Form ONRR-4440 electronically. This submittal process would be similar to the current process ONRR requires lessees to follow to submit Form ONRR-4430. Lessees would submit data in a specific format permitting the Web site to accept the form. The accepted document would then load directly into ONRR's databases.

For a more detailed discussion of the system changes, please see Section III, Procedural Matters, 2C(2), Administrative Costs—Federal Government.

*C. Section-By-Section Analysis of 30 CFR Part 1210—Forms and Reports, Subpart E—Production and Royalty Reports-Solid Minerals*

*§1210.201 How do I submit Form ONRR-4430, Solid Minerals Production and Royalty Report?*

ONRR proposes amending §1210.201(c)(3) to eliminate the list of addresses and instead refer to the ONRR Web site where lessees can retrieve the current address. Eliminating the list of addresses would eliminate the need for ONRR to publish *Federal Register* notices advising of address changes and, thereby, save administrative costs. The Web site provides readers with immediate availability to changes.



*§1210.202 How do I submit Form ONRR-4440, Solid Minerals Sales Summary?*

ONRR also proposes to change the title of §1210.202 and amend that section by revising paragraph (a)(1) to reflect that we would now require sales summaries to be reported for each mine that has production on Federal or Indian solid minerals leases rather than using company-generated documents. This section also would identify which version of the form to use for the specific mineral type. For example, coal lessees would fill out and submit Form ONRR-4440A, but sodium and potassium lessees would fill out and submit Form ONRR-4440B.

As stated above, ONRR would phase in the reporting requirements. Initially, we would require all lessees (excluding certain small businesses) to submit the forms electronically, using a spreadsheet format software, such as Microsoft Excel. Subsequently, lessees would submit Form ONRR-4440 electronically like solid minerals reporters currently use to submit Form ONRR-4430, P&R Report. We would make forms and instructions available on the Solid Minerals Reporting Information webpage at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm).

The EPO Act requires the determination of coal advance royalty using spot market prices of comparable coal in the regions. This proposed Form ONRR-4440 would facilitate ONRR's ability to determine a reliable average spot market price for use in determining the coal advance royalty due under section 434 of the EPO Act. The Royalty Policy Committee Coal Subcommittee interviewed two primary publishers of coal spot market prices. Both publishers indicated that published coal spot market prices do not truly represent actual spot market prices because published coal spot market prices are merely an average of surveyed prices from a portion of the coal industry and include

other considerations, such as coal futures speculation. This proposed rulemaking would allow ONRR to determine a reliable average spot market price by using actual spot market prices that operators of mines with Federal coal leases submit on the proposed Form ONRR-4440.

ONRR proposes to remove paragraph (a)(2) because ONRR has found that we may be able to complete compliance activities without requiring lessees to submit a separate form for each remote storage site. However, ONRR reserves the right to collect remote sales site Sales Summary data on an as-needed basis under 30 CFR 1210.206.

ONRR proposes to renumber paragraph (a)(3) as paragraph (a)(2). In the renumbered paragraph (a)(2), we propose to specify the data elements for the products we require lessees to report on Form ONRR-4440. Reporting is necessary only for those leases with ad valorem royalty terms. ONRR believes that the existing requirement allowing submittal of each company's internally generated documents, which have no standard format, is inefficient and results in additional work for ONRR and lessees. Although some of these data elements do not apply to coal advance royalty, ONRR believes requiring standardized forms for each mineral type with leases having ad valorem royalty terms would eliminate the need for ONRR to interpret company-generated documents and to call lessees or operators with questions regarding such documents. ONRR believes this process would save lessees, operators, and ONRR time and administrative costs.

Requiring standardized forms would save ONRR administrative costs because it would enable ONRR to locate paired Solid Minerals Sales Summary (Form ONRR-4440)

and Solid Minerals Production and Royalty Report (Form ONRR-4430) reports, in ONRR's data bases and to make automated comparisons of the data from both forms.

#### *All Solid Mineral Leases*

The current regulations regarding sales summary data elements include “(ii) Sales Units,” which applies only to products. In this proposed rule, we would (1) keep this data element but renumber as “(xvii);” (2) apply this data element to both products and byproducts; and (3) remove the current data element “(xii) By-product Units.” All other data elements in the current regulations remain unchanged; however, we have renumbered these data elements. We list these renumbered data elements in the revised table below titled “Required Data Elements for Solid Minerals Sales Summary.”

Proposed new data elements numbered (i) through (iv) would provide ONRR with Mine Name, Mine Number, Customer Identification Number (Customer ID), and whether the lease is a Federal or Indian property. These “header” elements along with the following new elements (v) through (x) would provide ONRR with: Royalty Report Submission Identification Number (P&R Submission ID); Product Name as reported on the royalty report (P&R Equivalent Product Name); Sales Point (mine or remote storage site); Submission Type: Original (O) or Adjustment (A) or Revision of Original (O-R) or Revision of Adjustment (A-R); Sales Month/Year; and Purchaser Name.

ONRR proposes to add other new data elements necessary to carry out its advance royalty and compliance responsibilities. The following new data elements (xi, xiii, xiv, xv, and xvi) would address specific contract parameters:

- (xi) Delivery Point would be an alpha identifier that you use to identify the location of product delivery.

- (xiii) Contract Identification (Contract ID) would be an alpha or numeric identifier that you would use to identify a specific contract;
- (xiv) Contract Term: Spot (S) or Long Term (LT) would identify whether the contract is of a short or long duration; and
- (xv) Contract Type: Arm's Length (ARMS) or Non-Arm's Length (NARM) would distinguish between contracts that are arm's length and those that are not arm's length.
- (xvi) Destination Point would mean the final destination point to which a product is delivered by you or your affiliate to an arm's-length purchaser. For example, enter the City and State for domestic destination point(s); or the Country name such as "Korea," "China," "United Kingdom," etc. for foreign destination point(s).

#### *Coal Leases*

This proposed rule would require coal lessees to report the following revised and new quality parameter data elements:

- (xxv) Pounds Sulfur Dioxide per MMBtu (lbs SO<sub>2</sub>/MMBTU); and
- (xxvi) Percent Sodium Oxide (Sodium Oxide %), respectively, which are coal quality measurements.

These coal quality parameters would help ONRR determine what coal sales are comparable to others when determining advance royalty.

#### *Sodium/Potassium Leases*

The following new data elements (xxviii, xxix, and xxx) would require reporting specific contract information that would apply only to sodium/potassium leases:

- (xxviii) Foreign (F) or Domestic (D) would identify the market into which the lessee sold the product. ONRR would use this data element to determine how to value the product;
- (xxix) Reagent Costs would mean reagent costs the lessee proposes as allowable deductions used to reduce the value of sodium or potassium for royalty purposes; and
- (xxx) Bagging Costs would mean bagging costs the lessee proposes as allowable deductions used to reduce the value of sodium or potassium for royalty purposes.

Currently, sodium/potassium lessees are required to report “(xii) By-product Units” to ONRR on sales summaries only when requested. After reviewing our past practices regarding sodium/potassium leases, we do not believe that sodium/potassium lessees produce byproducts. If ONRR determines that we need additional data, we may request the data from lessees on an as-needed basis under current regulations at 30 CFR 1210.206. ONRR specifically requests comments regarding the production of byproducts from sodium/potassium lessees.

#### *Western Phosphate Leases*

The following new data elements (xxxi, xxxii, xxxiii, and xxxiv) would apply only to Western Phosphate leases:

- (xxxi) Sales Units (Wet Tons) would mean the tons of raw ore produced;
- (xxxii) Sales Units (Dry Tons) would mean the tons of ore the lessee reports to ONRR on Form ONRR-4430, derived by subtracting the moisture content from the wet tons;

- (xxxiii) Unit Value would mean the value of each unit of P<sub>2</sub>O<sub>5</sub>, which is used to calculate royalty due; and
- (xxxiv) Phosphorus Pentoxide (P<sub>2</sub>O<sub>5</sub>) tons would mean the number of P<sub>2</sub>O<sub>5</sub> tons the lessee used to calculate royalty due.

The proposed rule also would continue to require Western Phosphate lessees to report byproduct information to ONRR at the product level. However, rather than reporting byproducts on Form ONRR-4440C, the lessee would report the phosphate byproduct information on Form ONRR-4440E as Sales Units (xvii) and Gross Proceeds (xviii).

#### *Metal Leases*

The proposed rule would not require any new data elements for metals. Currently, metal byproducts are reported to ONRR on sales summaries only when requested. Also, some lessees report gross proceeds for the sale of metals that include the gross proceeds from byproducts. Under the proposed rule, you would report all byproducts produced and sold from metal leases monthly on Form ONRR-4440D. And you would report the gross proceeds to ONRR on Form ONRR-4440D separately for all products, including byproducts, produced and sold from metal leases. Instructions for completing Form ONRR-4440D would be available at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm).

#### *Non-ad valorem Leases*

Additionally, current regulations require lessees holding leases with non-ad valorem royalty terms to report only sales units on a monthly basis. ONRR also requires these lessees to report the purchaser of lease production on an as-requested basis. This proposed rule would not require lessees with non-ad valorem royalty terms to report data on Form ONRR-4440. After reviewing our past practices regarding non-ad valorem

leases, we do not believe that requiring lessees to submit Form ONRR-4440 would benefit our audit and compliance processes. If ONRR determines that we need additional data for non-ad valorem leases, we may request the data from lessees on an as-needed basis under current regulations at 30 CFR 1210.206.

ONRR proposes to delete the existing table at paragraph (a)(3) and add to paragraph (a)(2) the following revised table titled “Required Data Elements for Solid Minerals Sales Summary.” We indicate the new and revised data elements and numbers in bold.

**Required Data Elements for Solid Minerals Sales Summary**

| Data Element   | Coal<br>ONRR-4440A | Sodium/<br>Potassium<br>ONRR-4440B | Western<br>Phosphate<br>ONRR-4440C | Metals<br>ONRR-4440D | All other<br>leases with ad<br>valorem<br>royalty terms<br>ONRR-4440E |
|--|--------------------|------------------------------------|------------------------------------|----------------------|---|
| <b>(i) Mine Name</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(ii) Mine Number</b>  | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(iii) Customer ID</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(iv) Federal/Indian<br/>Indicator (FED/IND)</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(v) P&amp;R Submission<br/>ID</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(vi) P&amp;R Equivalent<br/>Product Name</b>  | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(vii) Sales Point</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(viii) Submission<br/>Type - Original (O),<br/>Adjustment (A),<br/>Original Revision<br/>(O-R), Adjustment<br/>Revision (A-R)</b> | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(ix) Sales<br/>Month/Year<br/>(MM/YYYY)</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Monthly</b>                     | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(x) Purchaser Name</b>  | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| <b>(xi) Delivery Point</b>   | <b>Monthly</b>     | <b>Monthly</b>                     | <b>Not Required</b>                | <b>Monthly</b>       | <b>Monthly</b>  |
| <b>(xii) Sales Summary</b>   | <b>Monthly</b>     | Monthly                            | <b>Monthly</b>                     | Monthly              | Monthly   |

| Data Element   | Coal<br>ONRR-4440A | Sodium/<br>Potassium<br>ONRR-4440B | Western<br>Phosphate<br>ONRR-4440C | Metals<br>ONRR-4440D | All other<br>leases with ad<br>valorem<br>royalty terms<br>ONRR-4440E |
|--|--------------------|------------------------------------|------------------------------------|----------------------|---|
| Product Name   |                    |                                    |                                    |                      |   |
| (xiii) Contract ID   | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xiv) Contract Term:<br>Indicate <b>Spot (S)</b> or<br><b>Long Term (LT)</b>                             | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xv) Contract Type:<br>Indicate <b>Non-Arm's-<br/>Length (NARM)</b> or<br><b>Arm's-Length<br/>(ARMS)</b> | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xvi) Destination<br>Point   | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xvii) Sales Units   | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xviii) Gross<br>Proceeds  | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xix) Processing or<br>Washing Costs   | Monthly            | Not Required                       | Not Required                       | Monthly              | Monthly   |
| (xx) Transportation<br>Costs   | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xxi) Size   | Monthly            | Not Required                       | Not Required                       | Not Required         | As Requested  |
| (xxii) Btu/lb  | Monthly            | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxiii) Ash (%)  | Monthly            | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxiv) Sulfur (%)  | Monthly            | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxv) lbs SO <sub>2</sub> /<br>MMBTU   | Monthly            | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxvi) Sodium Oxide<br>(%)   | Monthly            | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxvii) Moisture (%)   | Monthly            | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxviii) Foreign (F)<br>or Domestic (D)  | Not Required       | Monthly                            | Not Required                       | Not Required         | Not Required  |
| (xxix) Reagent<br>Costs  | Not Required       | Monthly                            | Not Required                       | Not Required         | Not Required  |
| (xxx) Bagging Costs  | Not Required       | Monthly                            | Not Required                       | Not Required         | Not Required  |
| (xxxi) Sales Units<br>(Wet Tons)   | Not Required       | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxxii) Sales Units<br>(Dry Tons)  | Not Required       | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxxiii) Unit Value  | Not Required       | Not Required                       | Monthly                            | Not Required         | Not Required  |



| Data Element                               | Coal<br>ONRR-4440A | Sodium/<br>Potassium<br>ONRR-4440B | Western<br>Phosphate<br>ONRR-4440C | Metals<br>ONRR-4440D | All other<br>leases with ad<br>valorem<br>royalty terms<br>ONRR-4440E |
|--|--------------------|------------------------------------|------------------------------------|----------------------|---|
| (xxxiv) P <sub>2</sub> O <sub>5</sub> tons | Not Required       | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxv) P <sub>2</sub> O <sub>5</sub> (%)    | Not Required       | Not Required                       | Monthly                            | Not Required         | Not Required  |

ONRR would add paragraph (a)(3) to §1210.202. Paragraph (a)(3) would explain that instructions for completing Form ONRR-4440, Solid Minerals Sales Summary, are available at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm).

Finally, ONRR proposes to change paragraphs (b) and (c), making necessary changes to show that ONRR would use proposed Form ONRR-4440 rather than company internally generated sales summaries to collect information.

Another proposed change in the submission of sales summary data relates to adjustments to reported data. Currently, reporters submit a single monthly Sales Summary. This submittal represents a “snapshot” that corresponds to the data valid at the time when the reporter submits the corresponding monthly original Form ONRR-4430. In order to accomplish the advance royalty and compliance efforts discussed above, we would require reporters to submit a revised Form ONRR-4440 to correspond with an adjusted Form ONRR-4430 when they submit the adjusted Form ONRR-4430. Reporters must continue to revise Solid Minerals Sales Summaries as often as they revise Solid Minerals Production and Royalty Reports. This change would enhance ONRR’s royalty compliance capabilities, particularly in monitoring lessees’ royalty adjustments using Form ONRR-4430. In addition, the proposed requirement that lessees submit revised Form ONRR-4440 data would ensure that ONRR has up-to-date spot market data. These facts are the key to implementing ONRR’s and BLM’s proposed coal advance royalty

rules. Furthermore, the submission of Form ONRR-4440 during these situations would enable ONRR to monitor lessees' sales contract performance and continuity, which is important for ONRR's royalty compliance efforts.

Overall, ONRR's proposed changes for the sales summary would enable us to enforce Congress's intent regarding the calculation of advance royalties and would improve our royalty compliance capabilities. Over the past several years, ONRR has evaluated its royalty compliance efforts. The new processes that we would implement to utilize increased data collections would strengthen our product sales verification efforts, particularly regarding verification of reported sales allocations between or among leases for (1) both mine and remote sales, (2) lessees' adherence to and enforcement of sales contract terms, and (3) lessees' reporting of production and sales adjustments.

*D. Section-by-Section Analysis of 30 CFR Part 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT*

In subpart A, ONRR proposes to make a technical amendment in §1218.40(c)(1) to refer to the new Form ONRR-4440, Solid Minerals Sales Summary.

We would amend part 1218 to add proposed subpart I titled "Federal Coal Advance Royalty."

We would add proposed subpart I to part 1218 to implement section 434 of the EAct. By this rule, the Secretary has decided, for purposes of implementing section 434 of the EAct, that ONRR, rather than BLM, would promulgate the regulations governing valuation of coal for advance royalty purposes.

*§1218.601 What definitions apply to this subpart?*

This section would define new terms applicable to this subpart, use some current terms from BLM's 43 CFR Part 3400, and use a revised term from BLM's proposed rule. ONRR would use BLM's definitions in this subpart to ensure consistency between this proposed rulemaking and BLM's proposed rulemaking titled "Lease Modifications, Lease and Logical Mining Unit Diligence, Advance Royalty, Royalty Rates, and Bonds," which BLM will publish concurrently with this proposed rulemaking.

ONRR proposes the following definitions:

*Applicable continued operation year* would mean the continued operation year (COY) for which payment of coal advance royalties is required in lieu of continued operation under current 43 CFR 3483.4.

ONRR proposes this definition because section 434 of the EPAct requires that the coal advance royalties be computed based on the average price in the spot market "during the last month of each applicable continued operation year." This definition changes both BLM's and ONRR's prior practices regarding establishing value for coal advance royalties based on the year prior to the COY at issue.

For example, under this proposed rule, if you needed to pay coal advance royalty for the COY March 2006 through February 2007, that same period would be the "applicable continued operation year." Thus, in this example, the value for coal advance royalty for the applicable continued operation year would be based on the average coal spot market prices for February 2007. As a result, lessees would pay advance royalties after the year in which the lessee chose to pay advance royalties in lieu of producing. This, in turn, results in a loss of time value of revenue to State governments and the Federal Government.

ONRR specifically requests comments on whether we should define the “applicable continued operation year” in the manner proposed, or in a manner consistent with previous practice. The previous practice was to determine value using prices of coal produced and sold during the immediately preceding production royalty payment period, which we interpreted to be the month preceding the start of the COY. Using the example above, if we defined “applicable continued operation year” consistent with prior practice, then, if you chose to pay coal advance royalty for the COY March 2006 through February 2007, the coal advance royalty value is based on the average coal spot market prices for February 2006. Under this definition, since the lessee would pay advance royalty at the beginning of the year in which the lessee chose to pay advance royalties in lieu of producing, State governments and the Federal Government would not lose the time value of revenue.

*Comparable coal* would mean coal that is sold in a similar market and that is similar in chemical and physical characteristics to the coal produced at the lease or mine for which payment of advance royalties is required in lieu of continued operation under current 43 CFR 3483.4. ONRR proposes this definition because section 434 of the EPOA requires that coal advance royalties be based on sales of “comparable coal.” ONRR considered defining comparable coal as being “like quality coal,” as defined under 30 CFR 1206.251. However, different markets require different quality requirements for coal. Therefore, we believe that it is reasonable to define “comparable coal” as not only of “like quality” but also sold in a similar market. For example, a coal mine may sell coal in both the steam market and the stoker market. However, coal sold in the stoker market can demand and receive a higher price and should not be considered

comparable to the same coal sold in the steam market. Another example is boilers in steam power plants that may have lower ash requirements than boilers used in processing sugar beets.

Likewise, coal sold to a captive power plant is likely not sold in similar market circumstances as coal sold on the open market. Furthermore, a coal mine on Indian land may be considered not comparable to a mine on Federal land, because of the possible differences in taxes and specific lease provisions imposed on production from the different lands.

ONRR specifically requests comments on this definition of comparable coal.

*Region* would mean one of the eight Federal coal production regions that BLM designates as follows: Denver-Raton Mesa Region, Fort Union Region, Green River-Hams Fork Region, Powder River Region, San Juan River Region, Southern Appalachian Region, Uinta-Southwestern Utah Region, and Western Interior Region. We propose this definition to be consistent with BLM-identified regions. Because these defined regions are very large geographically, we specifically request comments on other possible definitions of “region.” For example, should ONRR restrict the definition to include only other mines within a specified vicinity of the mine for which advance royalty value will be determined?

*Spot market* would mean a market in which sales transactions occur wherein a seller agrees to sell to a buyer a specified amount of coal at a specified price over a fixed period usually not exceeding a year. Such transactions do not normally require a cancellation notice to terminate, do not contain an obligation, and do not imply intent to continue in subsequent periods. This definition is consistent with other ONRR valuation regulations.

We specifically request comments on this definition, particularly whether we should include in the definition sales agreements of approximately 1-year duration in which an initial agreement continues upon renegotiation of the sales price. Such contracts are typically known as long-term contracts with annual price reopeners.

*Spot market price* would mean the price in a spot market contract. Spot market prices would include the spot market prices that you or other entities report to ONRR on Form ONRR-4440. We request comments on whether we should narrow the definition of spot market price to include only prices in arm's-length spot market contracts.

This proposed rule lists four BLM definitions that we would adopt. BLM defines the following terms at current 43 CFR 3480.0-5: *Advance royalty, continued operation, continued operation year, and logical mining unit (LMU)*. BLM proposes to revise the definition of *continued operation* in its proposed rulemaking. In this subpart, ONRR would utilize BLM's existing definitions and BLM's proposed definition for *continued operation*.

*§1218.602 How will ONRR compute the coal advance royalty you owe?*

Because the Secretary has designated ONRR to compute coal advance royalty due in this rulemaking, we propose to move those BLM responsibilities from current 43 CFR 3483.4(c) to this section. Therefore, paragraph (a) would explain that ONRR will calculate the coal advance royalty due by multiplying the volume of coal that BLM computes under proposed 43 CFR 3483.4(g) by the value that ONRR calculates under paragraph (a) of this section and by the royalty rate that BLM prescribes under proposed 43 CFR 3483.4(d).

In section 434 of the EAct, Congress prescribed how the Secretary must value advance royalty for Federal coal leases. Therefore, consistent with EAct, paragraph (a)(1) of this section would explain that ONRR will use the weighted average spot market prices for comparable coal from the same region during the last month of the applicable COY as the value for royalty purposes. Because we do not currently have a reliable source for average spot market prices for comparable coal from the same region, we propose to collect such information from Federal coal lessees in the new information collection described above for 30 CFR 1210.202(a).

The EAct section 434 also prescribes that if there are no spot market prices for comparable coal from the same region, the Secretary may establish a “comparable method . . . to capture the commercial value of coal.” Therefore, we propose an alternative means of establishing the value of coal for advance royalty purposes in paragraph (a)(2). In paragraph (a)(2)(i), we propose to use the weighted average spot market prices for comparable coal from another region as value. We believe that such prices are the most reasonable method to capture the comparable value of coal. In paragraph (a)(2)(ii), we propose to use any other reasonable value we determine if spot prices for comparable coal from another region are not available.

We welcome your comments on these proposed alternatives as well as suggestions for other alternatives.

Paragraph (b) would explain that ONRR would multiply the value computed under paragraph (a) by the royalty rate BLM prescribes under proposed 43 CFR 3483.4(d) to derive the coal advance royalty amount you would owe.

Paragraph (c) would explain that ONRR would issue an order to pay coal advance royalty based upon its calculations under this section.

*§1218.603 When is my coal advance royalty payment due?*

This section would provide that your coal advance royalty payment is due 30 days after you receive the Order to Pay Coal Advance Royalty, which ONRR issues under 30 CFR 1218.602(c). We believe that 30 days is a sufficient amount of time to allow the lessee to submit the coal advance royalty due.

*§1218.604 How do I report and pay my coal advance royalty?*

This section would provide instructions on how to report and pay your coal advance royalty.

*§1218.605 Is my coal advance royalty payment subject to late payment charges?*

This section would explain that, if you do not timely pay an ONRR Order to Pay Coal Advance Royalty that we issued under 30 CFR 1218.602(c), then you must pay late payment interest under 30 CFR 1218.202.

*§1218.606 May I credit my coal advance royalty payments against future coal production royalties?*

This section would implement the provision in section 434 of the EPLA allowing lessees to credit any coal advance royalties against future production royalties due from that lease. This section also advises that you may not reduce production royalties for that lease below zero for any year.

*§1218.607 How may I appeal an ONRR Order to Pay Coal Advance Royalty?*

This section would inform lessees that, if they receive an Order to Pay Coal Advance Royalty, they may appeal that order under 30 CFR part 1290.



*§1218.608 How may I suspend compliance with an ONRR Order to Pay Coal Advance Royalty?*

This section would inform lessees that, if they appeal an Order to Pay Coal Advance Royalty, they may suspend compliance with the order to pay coal advance royalty under 30 CFR 1243.4.

### **III. Procedural Matters**

#### *1. Summary Cost and Royalty Impact Data*

The proposed changes to the coal advance royalty valuation regulations, outlined above, would have royalty impacts on industry, states, and the Federal Government. There are also administrative costs that both industry and the Federal Government would incur under this proposed rulemaking.

Industry and Federal Government costs would be offset by benefits resulting from this proposed rulemaking. The following table displays the expected costs associated with industry, State and local governments, and the Federal Government, with a detailed description of each cost category following the table.

#### **SUMMARY OF EXPECTED COSTS AND COAL ADVANCE ROYALTY IMPACTS**

| Description                                      | Administrative costs and advance royalties increases or decreases |                      |
|--|---|----------------------|
|  | First year  | Each subsequent year |
| A. Industry                                      |   |                      |
| (1) Time Value of Delayed Advance Royalty (Gain) | \$304,720   | \$304,720            |
| (2) Administrative Costs                         | -\$21,150   | -\$21,150            |
| (3) Administrative Cost Savings                  | \$42,300  | \$42,300             |
| Net Expected Change to Industry.....             | \$325,870   | \$325,870            |
| B. State and Local Governments                   |   |                      |

|   |            |            |
|---|------------|------------|
| (1) Time Value of Delayed Advance Royalty (Loss)        | -\$149,313 | -\$149,313 |
| (2) Administrative Cost Increase                        | 0          | 0          |
| (3) Administrative Cost Savings                         | 0          | 0          |
| Net Expected Change to State and Local Governments..... | -\$149,313 | -\$149,313 |
| C. Federal Government                                   |            |            |
| (1) Time Value of Delayed Advance Royalty (Loss)        | -\$155,407 | -\$155,407 |
| (2) Administrative Cost Increase (Loss)                 |            |            |
| Automated System Phase 1                                |            |            |
| (\$270,500).....  | -\$270,500 | 0          |
| Automated System Phase 2                                |            |            |
| (\$375,000).....  | -\$375,000 | 0          |
| (3) Administrative Cost Savings (Gain)                  |            |            |
| Phase 1—(\$54,000 + \$108,000).....                     | \$162,000  | \$162,000  |
| Phase 2—(\$5,760 + \$54,000 + \$108,000).....           | \$167,760  | \$167,760  |
| Net Expected Change to Federal Government               |            |            |
| Phase 1—(-\$155,407 - \$270,500 + \$162,000).....       | -\$263,907 | \$6,593    |
| Phase 2—(-\$155,407 - \$375,000 + \$167,760).....       | -\$362,647 | \$12,353   |

Section 434 of EPOA has an impact on coal advance royalty resulting from a new methodology for computing coal advance royalty. Under EPOA, ONRR would use average spot market prices for the sales of comparable coal from the same region during the last month of each applicable COY. The provision for using the last month of each applicable COY would change the date coal advance royalty is due from the beginning of the applicable COY to after the end of the applicable COY. Generally, for industry, this provision would mean they would have the benefit of not paying coal advance royalty for about a year. State governments and the Federal Government conversely would not have the use of the coal advance royalty payment for a year and, therefore, at a minimum, lose the time value of that advance royalty payment.

Published coal spot market prices are not readily available or reliable. The Royalty Policy Committee's Coal Subcommittee interviewed two primary publishers of coal spot market prices. Both publishers indicated that the published coal spot market prices do not truly represent actual coal spot market prices because the published coal spot market prices are merely an average of surveyed prices from a portion of the coal industry and

include other considerations such as coal futures speculation. This proposed rule would provide ONRR an alternative method of determining an average coal spot market pricing, which would be more reliable than publicly available prices. This alternative method would be based on actual coal spot market data operators of mines submit for Federal coal leases on proposed Form ONRR-4440, Solid Minerals Sales Summary. On this proposed form, ONRR would require industry to identify spot market prices, which we would use to determine a weighted average spot market price for comparable coal in the region.

To estimate the impact of using spot market prices, ONRR used the only spot market pricing currently available, published coal spot market prices. We compared three previous coal advance royalty valuation cases based on the existing regulations for three different months to currently available coal spot market prices for those months.

Our sampling demonstrated that in two cases, the average published coal spot market prices were higher than the ONRR-calculated value under the current regulations. In the third case, the average coal spot market price had a lower value than the ONRR-computed value. Thus, the royalty impact on industry, State governments, and the Federal Government can be either positive or negative. Therefore, on a case-by-case basis, there may be a cost or a benefit.

There are other “Costs and Benefits” under the meaning identified in OMB Circular A-4, as a result of this proposed rule. Under this proposed rule, administrative costs for both industry and the Federal Government would include those administrative costs required for changing the way industry submits sales summary information to ONRR. This proposed rule would standardize the format and data submission. We believe that

overall there will be considerable benefits or savings to both industry and the Federal Government because of efficiency gains from the new submittal format.

Indian leases do not contain coal advance royalty terms; therefore, the only portion of this proposed rule applicable to Indian leases is the information collection requirements. However, the cost of implementing information collection changes would only increase the burden upon industry and the Federal Government processing the new data elements.

#### A. Industry

*(1) Royalty Impacts—Time Value of Delayed Coal Advance Royalty (Gain).* Under this proposed rule, industry would have the benefit of the time value of money because, under the EAct, it would not have to make the coal advance royalty payment for an applicable COY until after the end of the COY. Section 434 of the EAct mandated this change. Under the current regulations, lessees pay coal advance royalty for an applicable COY before the applicable COY begins. To estimate this annual benefit to industry, ONRR calculated interest using 2010 coal advance royalty payments of approximately \$5.2 million/year. We calculated simple interest accrued for a COY based on the *Standard and Poor's Corporate Government Bond Yield Index for Industrial Triple B 15 year Bond Rate* of 5.86 percent for July 2010. That calculation resulted in an estimated time value of the delayed coal advance royalty payment benefit to industry of \$304,720 per year.

*(2) Administrative Costs—Industry.* ONRR expects that industry would incur some administrative costs as a result of this proposed rule. Currently, industry submits internally generated documents to meet ONRR's sales summary data collection requirements. This proposed rule would instead require companies to complete and

submit a standardized Solid Minerals Sales Summary, Form ONRR-4440. Because the proposed rule requires companies to complete and submit Form ONRR-4440, we estimate that this change in information collection methodology would increase industry sales summary data submission burden hours from ½ hour to 1 hour. We project that industry would submit approximately 75 Solid Minerals Sales Summaries each month. Labor costs for industry accountants in a metropolitan area are approximately \$47 per hour (\$33.69 [mean hourly wage] x 1.4 [benefit cost factor] = \$47.166 per hour, rounded to \$47) based on Bureau of Labor Statistics, National Occupational Employment and Wage Estimates. A one-half hour increase in reporting costs would increase industry costs by approximately \$21,150 per year calculated as follows:

$$(75 \text{ Solid Minerals Sales Summaries/month}) \times (12 \text{ months/year}) \times (0.5 \text{ hour/ Solid Minerals Sales Summary}) \times (\$47/\text{hour}).$$

However, ONRR also believes that industry benefits from this proposed reporting change because industry should incur a decrease in operational costs as a result of the standardized submission. For proposed Form ONRR-4440, we use available information technology (for example: spreadsheet programs, *i.e.*, Microsoft Excel, web-based submittal system). Using a standardized form would reduce the number of ONRR site visits, e-mails, or telephone contacts needed to interpret company-generated sales summary documents. Our historical data shows that, for each internally generated sales summary document that industry submits, industry must spend approximately 1 hour explaining to ONRR the data that industry submitted. We calculated the estimated total annual cost to industry by multiplying the approximately 75 Sales Summaries that industry submits per month by 12 months and then multiplying by a labor cost factor of

\$47 per hour. The resulting total estimated cost to industry under the existing information collection would be \$42,300 per year calculated as follows:

$(75 \text{ Sales Summaries/month}) \times (12 \text{ months/year}) \times (1 \text{ hour/Sales Summary}) \times (\$47/\text{hour}).$

We believe this cost would be greatly reduced with the implementation of proposed Form ONRR-4440.

The net expected benefit to industry would be \$325,870 per year calculated as follows:

$\$304,720 \text{ per year (Time Value of Delayed Advance Royalty (Gain))} -$   
 $\$21,150 \text{ per year (Administrative Costs)} + \$42,300 \text{ per year (Administrative Cost Savings)}.$

We invite industry to comment on estimated burden hours and reporting costs required to enter data into proposed Form ONRR-4440.

#### B. State and Local Governments

*1) Royalty Impacts—Time Value of Delayed Coal Advance Royalty (Loss).* This proposed rule would impact State governments and would impact local governments to the extent that they rely on State government distributions. As explained above, lessees would no longer pay advance royalties in advance of the applicable COY, resulting in an estimated benefit to industry of \$304,720 per year. However, this will cost both States and the Federal Government the benefit of the time value of money of \$304,720 per year. Since the States in which Federal coal leases are located receive 49 percent of the royalties under 30 U.S.C. 191, the cost to the states resulting from this rulemaking would

be approximately \$149,313 per year (49 percent of the estimated total loss of \$304,720 per year).

2) *Administrative Costs—State and Local Governments.* ONRR determined that this proposed rule would have no expected administrative costs for State and local governments because we process all collections and distributions.

#### C. Federal Government

1) *Royalty Impacts—Time Value of Delayed Coal Advance Royalty (Loss).* Like the states, under this proposed rule, there would be a cost to the Federal Government due to the loss of the time value of money. Thus, this proposed rule would reduce the annual royalties received by the Federal Government by approximately \$155,407 (51 percent of the estimated total loss of \$304,720).

2) *Administrative Costs—Federal Government.* ONRR is developing an automated system that would receive and store the sales summary data that lessees would submit on the proposed Form ONRR-4440. Industry would submit and we would utilize the submitted data in two phases. Phase 1 is a modified version of the system currently used to submit and handle unformatted sales summary data. Phase 2 would require lessees to submit proposed Form ONRR-4440 electronically. This submittal process would be similar to the current process ONRR requires lessees to follow to submit Form ONRR-4430. Each phase would have the benefits and costs discussed below.

In Phase 1, ONRR would modify its current procedures and systems to incorporate critical additional data fields this proposed rulemaking would require. Under this proposed rule, lessees would submit Form ONRR-4440 in a standardized format. Under Phase 1, ONRR would receive the new Form ONRR-4440 by email attachments that

lessees would submit to a secure email address. We would then move the attachments into an eRoom using a process similar to what ONRR currently uses to handle non-standardized sales summaries. Because industry would submit the data in a standardized format, a program designed under this phase would automatically load the sales summaries into ONRR's databases.

Phase 1, which has an estimated remaining cost to implement of \$270,500, would benefit ONRR by eliminating the need to manually load data into our database. The current entry of the sales summary information into our database is an ONRR burden of 1 hour for each of the 75 Sales Summaries that industry submits each month. An employee paid at the United States General Schedule, Grade 12 pay-scale level, currently performs this task. We calculate the hourly labor cost as follows:

$\$40.10 \text{ per hour (GS-12, Step 5)} \times 1.5 \text{ (benefit cost factor)} = \$60.15 \text{ per hour,}$   
rounded to \$60.

Therefore, in implementing Phase 1, we would eliminate the administrative costs of entering sales summary data into our database, resulting in a cost savings of \$54,000 per year calculated as follows:

$(75 \text{ Solid Minerals Sales Summaries/month}) \times (1 \text{ hour/Solid Minerals Sales Summary}) \times (12 \text{ months/year}) \times (\$60/\text{hour}).$

Phase 1 also would benefit ONRR due to the savings realized from the standardized formatting of the sales summary data, which eliminates the cost of clarifying sales summary data for compliance reviews. The current clarification process is an ONRR burden of 2 hours for each of the 75 Solid Minerals Sales Summaries that industry submits each month. An employee paid at the Grade 12 pay-scale level (see GS-12



hourly labor cost above) currently performs this task. Therefore, in Phase 1, ONRR would eliminate the administrative costs of clarifying sales summary data, resulting in a cost savings of \$108,000 per year calculated as follows:

$$(75 \text{ Solid Minerals Sales Summaries/month}) \times (2 \text{ hours/Solid Minerals Sales Summary}) \times (12 \text{ months/year}) \times (\$60/\text{hour}).$$

This combined savings realized from eliminating the need to manually load data into our database and the standard formatting of the sales summary data would be a benefit of \$162,000 per year (\$54,000 per year + \$108,000 per year).

In Phase 1, the net benefit to the Federal Government for the first year would be -\$263,907 calculated as follows:

$$-\$155,407 \text{ per year (Time Value of Delayed Advance Royalty (Loss))} - \$270,500 \text{ for first year (Automated System Phase 1)} + \$162,000 \text{ per year (Administrative Cost Savings—Gain for Phase 1)}.$$

For subsequent years, the net expected benefit to the Federal Government would be \$6,593 calculated as follows:

$$-\$155,407 \text{ per year (Time Value of Delayed Advance Royalty (Loss))} + \$162,000 \text{ per year (Administrative Cost Savings (Gain) for Phase 1)}.$$

Phase 2 would require lessees to submit proposed Form ONRR-4440 electronically. This submittal process would be similar to the current process ONRR requires lessees to follow to submit Form ONRR-4430. Lessees would submit data in a specific format permitting the Web site to accept the form. The accepted document would then load directly into ONRR's database. We would then analyze the data loaded into our

databases using existing compliance tools. The estimated cost to implement Phase 2 would be \$375,000.

We would also benefit from implementing Phase 2. Phase 2 would eliminate ONRR's administrative costs of moving Sales Summaries from e-mail to eRooms, which is required under Phase 1. The task of moving Sales Summaries from e-mail to eRooms is an ONRR burden of 8 hours per month. An employee paid at the Grade 12 pay-scale level (see GS-12 hourly labor cost above) currently performs this task. Therefore, using Phase 2, ONRR would eliminate the administrative costs of moving Sales Summaries, resulting in a cost savings of \$5,760 per year calculated as follows:

$$(8 \text{ hours/month}) \times (12 \text{ months/year}) \times (\$60/\text{hour}).$$

Phase 2 also would benefit ONRR by eliminating the need to manually load data into our database. The current entry of the sales summary information into our database is an ONRR burden of 1 hour for each of the 75 Solid Minerals Sales Summaries that industry submits each month. An employee paid at the Grade 12 pay-scale level (see GS-12 hourly labor cost above) currently performs this task. Therefore, in implementing Phase 2, ONRR would eliminate the administrative costs of entering sales summary data into our database, resulting in a cost savings of \$54,000 per year calculated as follows:

$$(75 \text{ Solid Minerals Sales Summaries/month}) \times (1 \text{ hour/Solid Minerals Sales Summaries}) \times (12 \text{ months/year}) \times (\$60/\text{hour}).$$

In addition, Phase 2 also would benefit ONRR due to savings realized from the standardized formatting of the sales summary data, which eliminates the cost of clarifying sales summary data for compliance reviews. The current clarification process is an ONRR burden of 2 hours for each of the 75 Solid Minerals Sales Summaries that

industry submits each month. An employee paid at the Grade 12 pay-scale level (see GS-12 hourly labor cost above) currently performs this task. Therefore, Phase 2, would eliminate ONRR's administrative costs of clarifying sales summary data, resulting in a cost savings of \$108,000 per year calculated as follows:

$$(75 \text{ Solid Minerals Sales Summaries/month}) \times (2 \text{ hours/Solid Minerals Sales Summary}) \times (12 \text{ months/year}) \times (\$60/\text{hour}).$$

The combined savings realized from eliminating the cost of moving sales summary data and eliminating the need to manually load data into our database and the standard formatting of the sales summary data would be a benefit of \$167,760 per year calculated as follows:

$$\$5,760 \text{ per year} + \$54,000 \text{ per year} + \$108,000 \text{ per year}.$$

To implement Phase 2, the net cost to the Federal Government for the first year would be -\$362,647 calculated as follows:

$$-\$155,407 \text{ per year (Time Value of Delayed Advance Royalty (Loss))} - \$375,000 \text{ for first year (Automated System Phase 2)} + \$167,760 \text{ per year (Administrative Cost Savings (Gain) for Phase 2)}.$$

For subsequent years, the net expected benefit to the Federal Government would be \$12,353 calculated as follows:

$$-\$155,407 \text{ per year (Time Value of Delayed Advance Royalty (Loss))} + \$167,760 \text{ per year (Administrative Cost Savings (Gain) for Phase 2)}.$$

During the implementation of each phase, ONRR would use data collected on proposed Form ONRR-4440 in other ways, which are not quantifiable, that would benefit the Federal Government. We believe the data would be valuable in making valuation

determinations, trending coal prices, comparing purchaser sources, and ensuring that the Federal Government receives fair market value for coal.

## *2. Regulatory Planning and Review (E.O. 12866)*

This proposed rule is not a significant rule, and the Office of Management and Budget (OMB) will review this proposed rule under Executive Order (E.O.) 12866. We have made the assessments as E.O. 12866 requires, and the results are given below.

a. This proposed rule would not have an effect of \$100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The Summary of Expected Costs and Coal Advance Royalty Impacts table, in item 1 above, demonstrates that the economic impact on industry, State and local governments, and the Federal Government is well below the \$100 million threshold used to define a rule as having a significant impact on the economy.

b. This proposed rule would not create a serious inconsistency or otherwise interfere with another agency's actions or plans. BLM is also proposing a rule as a result of the EPAct. Because the EPAct provisions regarding coal advance royalty affect both ONRR and BLM, the two agencies are working in a concerted effort to ensure that their proposed rules complement each other. BLM and ONRR plan to publish the proposed and final rules concurrently for the benefit of those constituents affected by the coal advance royalty provisions in the EPAct.

c. This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. As

demonstrated in the table above (see item 1), any budgetary effect on industry is expected to be an advantage to Federal coal lessees, with an estimated benefit of \$325,870 per year.

d. This proposed rule would not raise novel legal or policy issues. Departmental regulations have long required lessees to pay coal advance royalties in lieu of continued operation. The EPO Act merely changes the way ONRR would calculate the coal advance royalty but does not use a novel valuation methodology.

### *3. Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would not affect small entities. It would affect Federal coal lessees, which typically are made up of large industrial concerns.

### *4. Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule would not be a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more. The effect would be limited to a maximum estimated amount of \$362,647. See item 1 above.
- b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or for geographic regions. See item 1 above.
- c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to

compete with foreign-based enterprises. This proposed rule would benefit United States-based enterprises and would be a result of suggestions made through the Royalty Policy Committee made up, in part, of industry representatives.

#### *5. Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. We are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires because the proposed rule is not a mandate.

#### *6. Takings (E.O. 12630)*

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would apply only to Federal coal leases: it would not apply to private property. This proposed rule does not require a Takings Implication Assessment.

#### *7. Federalism (E.O. 13132)*

Under the criteria in Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Secretary of the Interior is responsible for managing Federal coal leases. The Department shares advance royalties collected from Federal coal leases with State governments on a percentage basis as the law prescribes. This proposed rule would not alter any lease management or royalty value-sharing provisions. It would determine only the value of production for coal advance royalty purposes. This proposed rule would not

impose administrative costs on States or localities. This proposed rule does not require a Federalism Assessment.

*8. Civil Justice Reform (E.O. 12988)*

This proposed rule would comply with the requirements of Executive Order 12988, for the reasons outlined in the following paragraphs:

a) It meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and write them to minimize litigation.

b) It meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language containing clear legal standards.

*9. Consultation with Indian Tribes (E.O. 13175)*

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it would have no potential effects on federally recognized Indian tribes. This proposed rule has two major portions: (1) valuation of Federal coal for advance royalty purposes, and (2) information collection applicable to all solid minerals leases. Federal coal excludes Indian coal by definition. Information collection does apply to both Federal and Indian coal leases: lessees, not Indian tribes, are responsible for reporting requirements.

*10. Paperwork Reduction Act*

This proposed rule changes a currently approved information collection (OMB Control Number 1012-0010; expires 1/31/2014; 3,509 total burden hours) by adding new requirements necessary for compliance efforts and to comply with the EPOA. Therefore, ONRR is submitting an Information Collection Request (ICR) to OMB for review and approval, as required under section 3507(d) of the Paperwork Reduction Act (PRA), 44

U.S.C. 3501 *et seq.* The title of the ICR is Solid Minerals and Geothermal Resources.”

This rule also refers to, but does not change, the information collection requirements that OMB already approved under Control Number 1012-0006.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden through the information collection process.

Please see *ICR Comments* under **ADDRESSES** section to submit comments.

OMB has up to 60 days to approve or disapprove this collection of information; however, submit your comments to OMB within 30 days in order to assure its maximum consideration. We will consider all comments received during the comment period for this notice of proposed rulemaking.

The intent of this rulemaking is to implement provisions of the EPO governing the payment of advance royalty on coal resources produced from Federal leases and to more efficiently collect information from all Federal and Indian solid minerals leases. The rule proposes to use a new standardized form (ONRR-4440) under 30 CFR 1210.202(a)(1) to change the way all solid minerals lessees report sales summary data and to collect the additional required data. We collect this information to ensure that lessees accurately value and properly pay royalties. We require lessees to report production and sales on Form ONRR-4430 for approximately 161 producing Federal and Indian solid minerals



properties. For approximately 75 of those properties, we would require the lessees to submit Form ONRR-4440.

Currently, OMB has approved a total of 3,509 burden hours for OMB Control Number 1012-0010. Of that total, OMB already approved 570 burden hours for existing sales summary reporting. ONRR estimates the total burden hours for the new Form ONRR-4440 would be 900 hours. Thus, the proposed form would result in a net increase of 330 burden hours. Therefore, the total proposed burden hours for OMB Control Number 1012-0010 would be 3,839 hours (3,509 + 330 net hours = 3,839 hours).

The following table displays the proposed requirements and estimated burden hours for this rule, by CFR citation, to be added to the existing collection under 1012-0010.

#### BURDEN BREAKDOWN

| 30 CFR 1210 and 1218   | Reporting and Recordkeeping Requirement  | Hour Burden                                | Average Number of Annual Responses | Annual Burden Hours |
|--|--|--|------------------------------------|---------------------|
| <b>PART 1210—FORMS AND REPORTS</b>   |  |  |                                    |                     |
| <b>SUBPART E—SOLID MINERALS, GENERAL</b>   |  |  |                                    |                     |
| <b>§1210.201 HOW DO I SUBMIT FORM ONRR-4430, SOLID MINERALS PRODUCTION AND ROYALTY REPORT?</b> |  |  |                                    |                     |
| 1210.201 (c)(3)  | (c) <i>How to submit</i> . . . (3) Submit Form ONRR-4430 paper copies to the address given at the Solid Minerals Reporting Information webpage . . . | Hour burden covered under §1210.201(a)(1). |                                    |                     |

| 30 CFR 1210 and 1218   | Reporting and Recordkeeping Requirement   | Hour Burden | Average Number of Annual Responses | Annual Burden Hours                           |
|--|---|-------------|------------------------------------|---|
| <b>§1210.202 HOW DO I SUBMIT FORM ONRR-4440, SOLID MINERALS SALES SUMMARY?</b> |   |             |                                    |   |
| 1210.202<br>(a)  | (a) <i>What to submit.</i> (1) For solid minerals produced or sold from Federal or Indian solid minerals leases for each mine, you must submit a completed Form ONRR-4440A for coal; Form ONRR-4440B for sodium/potassium; Form ONRR-4440C for Western Phosphate; Form ONRR-4440D for metals; and Form ONRR-4440E for all other minerals produced from leases containing ad valorem royalty terms not covered by Forms ONRR-4440A through ONRR-4440D. These forms and instructions are available on the Solid Minerals Reporting Information webpage at <a href="http://www.onrr.gov/FM/Forms/AFSSol_Min.htm">http://www.onrr.gov/FM/Forms/AFSSol_Min.htm</a> . (2) For all products produced from leases having ad valorem royalty terms, you must include the required data elements listed in the following table on the appropriate Form ONRR-4440. (3) Instructions to complete and submit Form ONRR-4440 are available on the Solid Minerals Reporting Information webpage at <a href="http://www.onrr.gov/FM/Forms/AFSSol_Min.htm">http://www.onrr.gov/FM/Forms/AFSSol_Min.htm</a> . | 1 hour      | 900                                | 900<br>(570 of which already approved by OMB) |

| 30 CFR 1210 and 1218   | Reporting and Recordkeeping Requirement   | Hour Burden  | Average Number of Annual Responses | Annual Burden Hours |
|--|---|--|------------------------------------|---------------------|
| 1210.202 (b)   | (b) <i>When to submit.</i> (1) You must use the table at §1210.202(a)(2) to determine how often you must submit the appropriate Form ONRR-4440. (2) You must submit Form ONRR-4440 each month after you submit the corresponding Form ONRR-4430 as required under 30 CFR 1210.201(a). (3) If the information on a previously reported Form ONRR-4440 is no longer correct, you must submit a revised Form ONRR-4440 in the same month after you submit the corresponding revised Form ONRR-4430 under 30 CFR 1210.201(b)(4). (4) For leases with no ad valorem royalty terms (that is, leases in which the royalty due is not a function of the value of production, such as a cents-per-ton or dollars-per-unit), ONRR may request that data from lessees on an as-needed basis under §1210.206. | Hour burden covered under §1210.202(a).                            |                                    |                     |
| 1210.202 (c)(1)  | (c) <i>How to submit.</i> (1) You must provide the appropriate Form ONRR-4440 data electronically using our Internet reporting Web site unless you meet the conditions in subparagraph (c)(2).  | Hour burden covered under §1210.202(a).                            |                                    |                     |
| PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT |   |  |                                    |                     |
| SUBPART I—FEDERAL COAL ADVANCE ROYALTY   |   |  |                                    |                     |
| §1218.607 HOW MAY I APPEAL AN ONRR ORDER TO PAY COAL ADVANCE ROYALTY?                            |   |  |                                    |                     |
| 1218.607   | You may appeal an ONRR Order to Pay Coal Advance Royalty under 30 CFR part 1290.  | Hour burden covered under ICR 1012-0006.<br><br>See 30 CFR 1243.4. |                                    |                     |
| §1218.608 HOW MAY I SUSPEND COMPLIANCE WITH AN ONRR ORDER TO PAY COAL ADVANCE ROYALTY?           |   |  |                                    |                     |
| 1218.608   | You may suspend compliance with an ONRR Order to Pay Coal Advance Royalty under 30 CFR 1243.4.  | Hour burden covered under ICR 1012-0006.                           |                                    |                     |
| BURDEN HOUR TOTAL  |   | 900  |                                    | 900                 |

*Public Comment Policy.* The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB,

PRA Section 3506(c)(2)(A) requires each agency to “\* \* \* provide 60-day notice in the Federal Register \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \* .” Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting “non-hour cost” burden to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995 (PRA’s effective date); (ii) to comply with requirements not associated with the information

collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you without charge upon request, and also post the ICR at

*[http://www.onrr.gov/Laws\\_R\\_D/FRNotices/FRInfColl.htm](http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm). You also may review the ICR at <http://www.reginfo.gov>.*

We will post all comments in response to this proposed information collection at *[http://www.onrr.gov/Laws\\_R\\_D/PubComm/default.htm](http://www.onrr.gov/Laws_R_D/PubComm/default.htm)*, and then click on “AA04.”

#### *11. National Environmental Policy Act*

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement is not required under the National Environmental Policy Act of 1969 (NEPA) because this rule is categorically excluded under: “(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.” See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments would have no consequences with respect to the physical environment. This proposed rule would not alter in any material way natural resource exploration, production, or transportation.

#### *12. Data Quality Act*

In developing this proposed rule, we did not conduct or use a study, experiment, or

survey requiring peer review under the Data Quality Act (Pub. L. 106-554), also known as the Information Quality Act. The Department of the Interior has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at <http://www.doi.gov/ocio/iq.html>.

### *13. Effects on the Energy Supply (E.O. 13211)*

This proposed rule would not be a significant energy action under the definition in Executive Order 13211, and, therefore, would not require a Statement of Energy Effects.

### *14. Clarity of this Regulation*

Executive Orders 12866 and 12988, and the Presidential Memorandum of June 1, 1998, require us to write all rules in plain language. This means that each rule we publish must: (a) be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you think we wrote unclearly, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### *15. Public availability of comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal

identifying information from public view, we cannot guarantee that we will be able to do so.

## **List of Subjects**

### **30 CFR Part 1203**

Coal, Rental, Royalty rate—reduction.

### **30 CFR Part 1210**

Coal, Continental shelf, Definitions, Federal and Indian leases, Geothermal resources, Information collection, Oil and gas reporting, Phosphate, Potassium, Reporting and recordkeeping requirements, Royalties, Sales contracts, Sales summary, Sodium, Solid minerals, Sulfur.

### **30 CFR Part 1218**

Advance royalty, Appeals, Bonuses, Coal, Continental shelf, Definitions, Electronic funds transfer, Federal and Indian leases, Geothermal resources, Government contracts, Information collection, Oil and gas, Payment credits, Recoupments, Rentals, Reporting and recordkeeping requirements, Royalties.

\_\_ June 5, 2013 \_\_

Date

Rhea Suh,  
Assistant Secretary,  
Policy, Management and Budget

For the reasons stated in the preamble, the Office of Natural Resources Revenue proposes to amend 30 CFR parts 1203, 1210, and 1218 as set forth below:

#### **PART 1203—RELIEF OR REDUCTION IN ROYALTY RATES**

1. The authority for part 1203 continues to read as follows:

**Authority:** 25 U.S.C. 396 *et seq.*, 25 U.S.C. 396a *et seq.*, 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351 *et seq.*, 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, and 43 U.S.C. 1331 *et seq.*

##### **§ 1203.250 [Removed]**

2. Remove §1203.250.

##### **§ 1203.251 [Redesignated as § 1203.250]**

3. Redesignate §1203.251 as §1203.250.

#### **PART 1210—FORMS AND REPORTS**

4. The authority for part 1210 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

##### **Subpart A—General Provisions**

##### **§ 1210.10 [Amended]**

5. In §1210.10:
  - a. Revise the table under the column "Form or information collected" by removing the entry for "Sales summaries—solid minerals."



b. Revise the table under the column "Form or information collected" by adding "Form ONRR-4440—Solid Minerals Sales Summary" following the entry for "Form ONRR-4430, Solid Minerals Production and Royalty Report".

#### **Subpart E—Production and Royalty Reports-Solid Minerals**

6. Amend § 1210.201 by revising paragraph (c)(3) to read as follows:

##### **§ 1210.201 How do I submit Form ONRR-4430, Solid Minerals Production and Royalty Report?**

\* \* \* \* \*

(c) \* \* \*

(3) Submit Form ONRR-4430 paper copies to the address given at the Solid Minerals Reporting Information webpage at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm), or you may contact us toll free at 1 (888) 201-6416 for the address.

\* \* \* \* \*

7. Revise §1210.202 to read as follows:

##### **§1210.202 How do I submit Form ONRR-4440, Solid Minerals Sales Summary?**

(a) *What to submit.* (1) For solid minerals produced or sold from Federal or Indian solid minerals leases for each mine, you must submit a completed Form ONRR-4440A for coal; Form ONRR-4440B for sodium/potassium; Form ONRR-4440C for Western Phosphate; Form ONRR-4440D for metals; and Form ONRR-4440E for all other minerals produced from leases containing ad valorem royalty terms not covered by Forms ONRR-4440A through ONRR-4440D. These forms and instructions are available at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm).

(2) For all products produced from leases having ad valorem royalty terms, you must include the required data elements listed in the following table on the appropriate Form ONRR-4440.

**Required Data Elements for Solid Minerals Sales Summary**

| Data Element  | Coal<br>ONRR-4440A | Sodium/<br>potassium<br>ONRR-4440B | Western<br>phosphate<br>ONRR-4440C | Metals<br>ONRR-4440D | All other leases<br>with ad<br>valorem royalty<br>terms<br>ONRR-4440E |
|---|--------------------|------------------------------------|------------------------------------|----------------------|---|
| (i) Mine Name   | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (ii) Mine Number  | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (iii) Customer ID   | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (iv) Federal/Indian<br>Indicator (FED/IND)  | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (v) P&R Submission ID   | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (vi) P&R Equivalent<br>Product Name   | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (vii) Sales Point   | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (viii) Submission Type<br>- Original (O),<br>Adjustment (A),<br>Original Revision (O-<br>R), Adjustment<br>Revision (A-R) | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (ix) Sales Month/Year<br>(MM/YYYY)  | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (x) Purchaser Name  | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (xi) Delivery Point   | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xii) Sales Summary<br>Product Name   | Monthly            | Monthly                            | Monthly                            | Monthly              | Monthly   |
| (xiii) Contract ID  | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xiv) Contract Term:<br>Indicate Spot (S) or<br>Long Term (LT)  | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xv) Contract Type<br>Indicate Non-Arm's-<br>Length (NARM) or<br>Arm's-Length (ARMS)                                      | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xvi) Destination Point   | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xvii) Sales Units  | Monthly            | Monthly                            | Not Required                       | Monthly              | Monthly   |

| Data Element                               | Coal<br>ONRR-<br>4440A | Sodium/<br>potassium<br>ONRR-4440B | Western<br>phosphate<br>ONRR-4440C | Metals<br>ONRR-4440D | All other leases<br>with ad<br>valorem royalty<br>terms<br>ONRR-4440E |
|--|------------------------|------------------------------------|------------------------------------|----------------------|---|
| (xviii) Gross Proceeds                     | Monthly                | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xix) Processing or<br>Washing Costs       | Monthly                | Not Required                       | Not Required                       | Monthly              | Monthly   |
| (xx) Transportation<br>Costs               | Monthly                | Monthly                            | Not Required                       | Monthly              | Monthly   |
| (xxi) Size                                 | Monthly                | Not Required                       | Not Required                       | Not Required         | As Requested  |
| (xxii) Btu/lb                              | Monthly                | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxiii) Ash (%)                            | Monthly                | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxiv) Sulfur (%)                          | Monthly                | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxv) lbs SO <sub>2</sub> /MMBTU           | Monthly                | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxvi) Sodium Oxide<br>(%)                 | Monthly                | Not Required                       | Not Required                       | Not Required         | Not Required  |
| (xxvii) Moisture (%)                       | Monthly                | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxviii) Foreign (F) or<br>Domestic (D)    | Not Required           | Monthly                            | Not Required                       | Not Required         | Not Required  |
| (xxix) Reagent Costs                       | Not Required           | Monthly                            | Not Required                       | Not Required         | Not Required  |
| (xxx) Bagging Costs                        | Not Required           | Monthly                            | Not Required                       | Not Required         | Not Required  |
| (xxxi) Sales Units<br>(Wet Tons)           | Not Required           | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxxii) Sales Units (Dry<br>Tons)          | Not Required           | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxxiii) Unit Value                        | Not Required           | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxxiv) P <sub>2</sub> O <sub>5</sub> tons | Not Required           | Not Required                       | Monthly                            | Not Required         | Not Required  |
| (xxxv) P <sub>2</sub> O <sub>5</sub> (%)   | Not Required           | Not Required                       | Monthly                            | Not Required         | Not Required  |

(3) Instructions to complete and submit Form ONRR-4440 are available at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm).

(b) *When to submit.* (1) You must use the table at 30 CFR 1210.202(a)(2) to determine how often you must submit the appropriate Form ONRR-4440.

(2) You must submit Form ONRR-4440 each month after you submit the corresponding Form ONRR-4430 as required under 30 CFR 1210.201(a).

(3) If the information on a previously reported Form ONRR-4440 is no longer correct, you must submit a revised Form ONRR-4440 in the same month after you submit the corresponding revised Form ONRR-4430 under 30 CFR 1210.201(b)(4).

(4) For leases with no ad valorem royalty terms (that is, leases in which the royalty due is not a function of the value of production, such as a cents-per-ton or dollars-per-unit), ONRR may request that data from lessees on an as-needed basis under 30 CFR 1210.206.

(c) *How to submit.* (1) You must provide the appropriate Form ONRR-4440 data electronically using our Internet reporting Web site unless you meet the conditions in subparagraph (c)(2).

(2) You are not required to report electronically if:

(i) You are a small business as defined by the United States Small Business Administration (13 CFR 121.201); and

(ii) You have no computer, no plans to purchase a computer, and no contract with an electronic reporting service.

(3) Instructions for submitting Form ONRR-4440 are available at [http://www.onrr.gov/FM/Forms/AFSSol\\_Min.htm](http://www.onrr.gov/FM/Forms/AFSSol_Min.htm).

## **PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT**

8. The authority for part 1218 continues to read as follows:

**AUTHORITY:** 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

## **Subpart A—General Provisions**

### **§1218.40 [Amended]**

9. Amend §1218.40(c)(1) by adding “Form ONRR-4440, Solid Minerals Sales Summary” after “Form ONRR-4430, Solid Minerals Production and Royalty Report;”.

10. Add Subpart I—Federal Coal Advance Royalty to read as follows:

## **Subpart I—Federal Coal Advance Royalty**

Sec.

1218.601 What definitions apply to this subpart?

1218.602 How will ONRR compute the coal advance royalty you owe?

1218.603 When is my coal advance royalty payment due?

1218.604 How do I report and pay my coal advance royalty?

1218.605 Is my coal advance royalty payment subject to late payment charges?

1218.606 May I credit my coal advance royalty payments against future coal production royalties?

1218.607 How may I appeal an ONRR Order to Pay Coal Advance Royalty?

1218.608 How may I suspend compliance with an ONRR Order to Pay Coal Advance Royalty?

**AUTHORITY:** The Energy Policy Act of 2005 (Pub. L. 109-58, Sec. 434).

### **§1218.601 What definitions apply to this subpart?**

(a) The following definitions apply to this subpart:

*Applicable continued operation year* means the continued operation year (COY) for which payment of coal advance royalties is required in lieu of continued operation under 43 CFR 3483.4.

*Comparable coal* means coal that is sold in a similar market and is similar in chemical and physical characteristics to the coal produced at the lease or mine for which payment of advance royalties is required in lieu of continued operation under 43 CFR 3483.4.

*Region* means one of the eight Federal coal production regions, which the Bureau of Land Management designates as follows: Denver-Raton Mesa Region, Fort Union Region, Green River-Hams Fork Region, Powder River Region, San Juan River Region, Southern Appalachian Region, Uinta-Southwestern Utah Region, and Western Interior Region.

(4) *Spot market* means a market in which sales transactions occur where a seller agrees to sell to a buyer a specified amount of coal at a specified price over a fixed period usually not exceeding a year. Such transactions do not normally require a cancellation notice to terminate, do not contain an obligation, nor do they imply intent to continue in subsequent periods.

(5) *Spot market price* means the price you or another seller report to ONRR on Form ONRR-4440 for a spot market contract.

(b) The following terms are defined at 43 CFR 3480.0-5:

*Advance Royalty;*

*Continued operation;*

*Continued operation year;* and

*Logical mining unit (LMU).*

#### **§1218.602 How will ONRR compute the coal advance royalty you owe?**

(a) ONRR will compute the value of coal advance royalties due for a lease or LMU by multiplying the commercial quantities in tons calculated under 43 CFR 3483.4(g) by:

(1) The weighted average spot market price lessees reported to ONRR on Form ONRR-4440 under 30 CFR 1210.202(a) for sales of comparable coal from the same region during the last month of each applicable continued operation year; or,

(2) In the absence of spot market prices for comparable coal from the same region:

(i) The weighted average spot market price for comparable coal from another region during the last month of each applicable continued operation year; or, if none are available,

(ii) Any other reasonable value ONRR determines.

(b) The coal advance royalty you owe is the dollar amount ONRR computes under paragraph (a) of this section multiplied by the royalty rate BLM prescribes under 43 CFR 3483.4(d).

(c) ONRR will issue you an Order to Pay Coal Advance Royalty based on its computation under paragraph (b) of this section.

#### **§1218.603 When is my coal advance royalty payment due?**

Your coal advance royalty is due 30 days after you receive the ONRR Order to Pay Coal Advance Royalty under 30 CFR 1218.602(c).

#### **§1218.604 How do I report and pay my coal advance royalty?**

(a) You must report coal advance royalty on Form ONRR-4430, Solid Minerals Production and Royalty Report, under 30 CFR 1210.201.

(b) You must pay coal advance royalty according to the payment instructions at <http://onrr.gov/FM/PayInfo.htm>.

#### **§1218.605 Is my coal advance royalty payment subject to late payment charges?**

If you fail to pay timely the amount due in the ONRR Order to Pay Coal Advance Royalty issued under 30 CFR 1218.602(c), then you must pay interest computed under 30 CFR 1218.202 from the date the payment was due.

**§1218.606 May I credit my coal advance royalty payments against future coal production royalties?**

(a) You may credit a full coal advance royalty payment on a lease against future production royalties from that lease.

(1) You may not credit a partial coal advance royalty payment until you pay the full amount due under the Order to Pay Coal Advance Royalty that ONRR issues to you under 30 CFR 1218.602(c).

(2) If your coal advance royalty payment exceeds the production royalty payable in a particular year, you may credit any remaining coal advance royalty payment against production royalty payments from the lease in subsequent years.

(b) You may not credit coal advance royalties paid on one lease against production royalties from another lease unless both leases are Federal and both are within the same LMU.

(c) You may not use a coal advance royalty credit to reduce the amount of production royalty paid for any year below zero.

(d) You may not request a refund of any coal advance royalty payment. You may only credit coal advance royalty payment against future production royalties from that lease.

**§1218.607 How may I appeal an ONRR Order to Pay Coal Advance Royalty?**

You may appeal an ONRR Order to Pay Coal Advance Royalty under 30 CFR part 1290.

**§1218.608 How may I suspend compliance with an ONRR Order to Pay Coal Advance Royalty?**



You may suspend compliance with an ONRR Order to Pay Coal Advance Royalty under 30 CFR 1243.4.

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